

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )

MDL NO. 1456  
Civil Action No. 01-12257-PBS

\_\_\_\_\_  
THIS DOCUMENT RELATES TO: )

International Union of Operating )  
Engineers, Local No. 68 Welfare )  
Fund v. AstraZeneca PLC et al. )  
Civil Action No. 04-11503-PBS )  
\_\_\_\_\_

**AFFIDAVIT OF TERRY K. SHERMAN**

STATE OF OHIO )  
 ) ss.:  
COUNTY OF FRANKLIN )

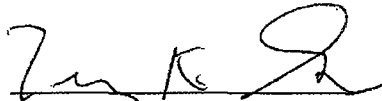
TERRY K. SHERMAN, being duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of Ohio.
2. Prior to and during July 2003, I represented Dr. Robert A. Berkman as a defendant in a criminal case in United States District Court, District of Delaware. During July 2003, I assisted in the representation and acted on behalf of Dr. Berkman in the above-captioned action (the "New Jersey Action").
3. On or several days prior to July 9, 2003, I had a telephone conversation with Donald E. Haviland, Jr., counsel for plaintiffs in the New Jersey Action. Mr. Haviland asked if I would accept service of the summons and complaint in the New Jersey Action on behalf of Dr. Berkman. I told Mr.


Haviland that I would not accept service on behalf of Dr. Berkman. I never accepted service of the summons and complaint in the New Jersey Action on behalf of Dr. Berkman.

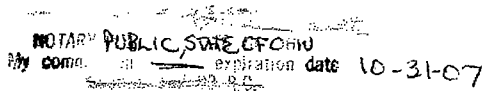
4. Also during this telephone conversation, Mr. Haviland informed me that plaintiffs were not interested in Dr. Berkman as a defendant in the New Jersey Action, but instead as a fact witness. He told me that the action had been filed in New Jersey state court and that plaintiffs were interested in keeping the case in state court. Mr. Haviland suggested that it would be in Dr. Berkman's best interest for the case to remain in state court in New Jersey.
5. On July 8, 2003, Mr. Haviland sent to me (and the other counsel for the doctor defendants in the New Jersey Action) via facsimile a letter that, among other things, suggested that I send a letter to the clerk of the United States District Court, District of New Jersey, which informed the court that Dr. Berkman did not consent to federal jurisdiction. (Letter attached as Exhibit A.) Mr. Haviland's letter included proposed language that I should use in drafting and sending such a letter to the court.
6. On July 9, 2003, I sent to the clerk of the United States District Court in New Jersey a letter, based on the language proposed by Mr. Haviland, that informed the court that Dr. Berkman did not consent to federal jurisdiction in the New Jersey Action and desired that the action proceed in New Jersey state court, Monmouth County. (Letter attached as Exhibit B.)

7. At some point towards the end of July 2003, I ceased assisting in the representation of Dr. Berkman in the above-captioned action.

  
Terry K. Sherman

Sworn to before me this  
27th day of September, 2005.

  
Notary Public

  
NOTARY PUBLIC, STATE OF OHIO  
My comm. expires on 10-31-07

# **EXHIBIT 2**

SEP-21-2005 WED 12:58 PM CLOPPERT LAW

FAX NO. 814 821 8963

P. 07

JUL 8 2003 4:58PM KLINE-SPECTER-P.C.

NO. 326 P. 1

**KLINE & SPECTER***A Professional Corporation*

THE NORTHEASTERN PLAZA  
1525 LOCUST STREET  
PHILADELPHIA, PA 19102  
TEL: 215-772-1000  
FAX: 215-772-0917  
WWW.KSPECTER.COM

**FAX COVER SHEET**

July 8, 2003

**Sender:** Donald H. Haviland, Jr., Esquire  
**Re:** *In re AWP Litigation*

Our File No.: 200700

**RECIPIENTS****REPRESENTS****TELEPHONE****TELEFAX**

Michael Mustakoff, Esquire  
DUANE MORRIS LLP  
One Liberty Place, Suite 4200  
Philadelphia, PA 19103-7396  
215-979-1810

Dr. Saad Antonin

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215-979-1020

Jack Fernandez, Esquire  
ZUCKERMAN, SPAEDER, LLP  
101 E. Kennedy Blvd., Suite 1200  
Tampa, FL 33602

Dr. Stanley Hopkins

813-221-1010

813-223-7961

Terry K. Shorman, Esquire  
52 West Whittier Street  
Columbus, OH 43206

Dr. Robert Berkman

614-444-8800

614-445-9487

John E. Keefe, Jr., Esquire  
LYNCH, MARTIN, KANE, KUPER,  
KEEFE & BARTELS, LLC  
830 Broad Street  
Shrewsbury, NJ 07702

732-224-0400

732-224-9494

**Pages:** 3 (including cover).  
**Comments:** Original ☐ will follow. ☐ will not follow.

If you do not receive all the pages, please call:

Kathy (215-772-1398), Judy (215-772-2479), Deb (215-772-2483) or Jennifer (215-772-2482).

**ATTENTION****CHECK TO MAKE CERTAIN THAT YOU ARE THE INTENDED RECIPIENT OF THIS DOCUMENT.**

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SEP-21-2005 WED 12:56 PM CLOPPERT LAW

FAX NO. 614 621 8963

P. 08

JUL. 8, 2003 4:58PM

KLINE & SPECTER, P.C.

NO. 326 P. 2

**KLINE & SPECTER**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
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1325 LOCUST STREET  
PHILADELPHIA, PENNSYLVANIA 19104

DONALD E. HAVILAND, JR.

215-772-1000

FAX: 215-772-1007

FAX: 215-772-1007

[Don.Haviland@klineandspecter.com](mailto:Don.Haviland@klineandspecter.com)

July 8, 2003

VIA FACSIMILE

Michael Musukoff, Esquire  
DUANE MORRIS LLP  
One Liberty Place, Suite 4200  
Philadelphia, Pennsylvania 19103-7396

Re: *International Union of Operating Engineers, Local No 68 Welfare Fund*  
*v. AstraZeneca Pharmaceuticals, L.P., et al.; C.A. No. C-193-03*

Dear Mike:

Per our telephone conversation this afternoon, and our discussion about the need for you and counsel for the other doctor-defendants to determine whether or not to consent to federal court jurisdiction in this case, the following is language we would propose to be put in a letter to the federal court and plaintiff's counsel indicating your lack of consent to federal jurisdiction:

"This should serve to confirm that my client, Dr. \_\_\_\_\_, does not consent to the jurisdiction of the federal court in this case pursuant to 28 U.S.C. § 1446. Instead, my client desires to have this case proceed in New Jersey state court, Monmouth County as originally filed."

The same letter should be faxed to the following, with a carbon-copy to plaintiff's counsel:

William T. Walsh, Clerk  
United States District Court  
District of New Jersey  
Martin Luther King Federal Bldg  
and United States Courthouse  
50 Walnut Street  
Newark, NJ 07102  
(973) 645-6659 Facsimile

In addition, in order to short change the process for resolving the plaintiff's motion for a temporary restraining order against Dr. Antoun, if you are inclined to do so, I would suggest you add additional language to the effect that Dr. Antoun either consents to or does not oppose the entry of

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# **EXHIBIT 3**

SEP-21-2005 WED 12:55 PM CLOPPERT LAW

FAX NO. 614 621 8983

P. 08

09/16/2005 14:15 FAX 212 450 6888

DIV 30-51

10091

LAW OFFICE

6144459407

07/03/03 11:45am P. 082

Terry K. Sherman  
Trial Attorney

2628/2.31

52 West Windsor Street  
Columbus, Ohio 43060-2508

Office (614) 444-2500  
Fax (614) 444-4187  
Emergency (614) 439-0542  
Website [www.terryksherman.com](http://www.terryksherman.com)

July 9, 2003

William Holland, Deputy Clerk  
Office of the Clerk  
United States District Court  
Clarkson S. Fisher U. S. Court House &  
Federal Bldg.  
402 East State Street  
Trenton, NJ 08608

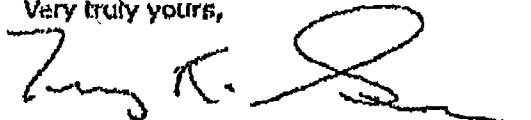
RE: International Union of Operating Engineers, Local No. 68  
Welfare Fund v. AstraZeneca Pharmaceuticals, L.P., et al.

Dear Mr. Holland:

The undersigned represents Dr. Robert Berkman, of Columbus, Ohio, in the above-referenced matter which was removed to federal court on Thursday, July 3, 2003. This letter serves as notice that my client, Dr. Robert Berkman, does not consent to the jurisdiction of the federal court in this case pursuant to 28 U.S.C. §1445. Instead, Dr. Berkman desires to have this case proceed in New Jersey State Court, Monmouth County, as originally filed.

Should you have any questions or are in need of any additional information, please do not hesitate to advise.

Very truly yours,



Terry K. Sherman

TKS:kms

cc: David J. Cooner, Esq.  
Donald E. Haviland, Jr., Esq.  
Dr. Robert Berkman

7/9/03

0529100200047

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